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LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

MALAYSIA

Communicated by the Government of Malaysia

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

POISONS ORDINANCE 1952

POISONS (PSYCHOTROPIC SUBSTANCES) REGULATIONS 1989

*) Note by the Secretariat: The present document is a direct reproduction of the text communicated to the Secretariat.

POISONS ORDINANCE 1952
POISONS (PSYCHOTROPIC SUBSTANCES)
REGULATIONS 1989

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Ord. 29/52 In exercise of the powers conferred by section 30 of the Poisons Ordinance 1952, the Minister makes the following regulations:

PART I
PRELIMINARY

Citation and commencement 1. These Regulations may be cited as the **Poisons (Psychotropic Substances) Regulations 1989** and shall come into force on the 15th April 1989.

Interpretation 2. In these Regulations, unless the context otherwise requires—

“competent authority” means the national authorities empowered to issue certificates and authorisations recognised by the Government of Malaysia, for the import and export of psychotropic substances;

“Convention” means the Convention on Psychotropic Substances that was adopted for signature at Vienna on the 21st February 1971;

“export”, with its grammatical variations and cognate expressions, means to take or cause to be taken out of Malaysia by land, air or water, otherwise than in transit;

“import”, with its grammatical variations and cognate expressions, means to bring or cause to be brought into Malaysia by land, air or water, otherwise than in transit;

“in transit” means taken or sent from any country and brought into Malaysia by land, air or water, whether or not landed or transhipped in Malaysia, for the sole purpose of being carried to another country either by the same or another conveyance;

“name of the psychotropic substance” means the International Non-proprietary Name (INN) of the psychotropic substance or, in the absence of the INN, the chemical name of the psychotropic substance;

“Ordinance” means the Poisons Ordinance 1952;

Act 235 “senior officer of Customs” shall have the meaning assigned to it in the Customs Act 1967.

PART II

POSSESSION OF PSYCHOTROPIC SUBSTANCE

3. (1) No person shall have in his possession any psychotropic substance unless—

Prohibition on possession of psychotropic substance

(a) he is authorised to be in possession of such psychotropic substance under these Regulations; and

(b) the psychotropic substance in his possession is—

(i) for a lawful purpose; and

(ii) obtained in accordance with the provisions of these Regulations.

(2) For the purposes of paragraph (a) of subregulation (1), the following persons or class of persons shall be authorised to be in possession of psychotropic substance:

- (a) a licenced pharmacist;
- (b) a registered medical practitioner;
- (c) a registered dentist Division I;
- (d) a veterinary surgeon;
- (e) the holder of a permit issued under regulation 15;
- (f) a person employed in any hospital at which human ailments are treated and for the time being in charge of any ward, operating theatre or of other sections of such hospital who possesses psychotropic substance for use in such ward, operating theatre or sections;
- (g) a person concerned with scientific education or research or chemical analysis in a department, university or institution wholly maintained by the Government or approved by the Director General of Health;
- (h) a pharmacist in the public service;
- (i) an officer of Customs, police officer or an officer of the Postal Department when acting in the course of his duty as such;
- (j) a Drug Enforcement Officer;
- (k) a person engaged in the delivery of any psychotropic substance from a lawful supplier to a person authorised to have it in his possession, for such period as in the circumstances of the case is reasonably sufficient to enable the delivery to the recipient to be effected;
- (l) a person lawfully supplied with such psychotropic substance—
 - (i) by a registered medical practitioner, registered dentist Division I or a veterinary surgeon; or
 - (ii) in accordance with a prescription lawfully given by a registered medical practitioner, registered dentist Division I or a veterinary surgeon;
- (m) a person acting on behalf of the class of persons mentioned in paragraph (1);
- (n) a person possessing psychotropic substance for administration to a patient or animal in accordance with the direction of a registered medical practitioner, registered dentist Division I or a veterinary surgeon, as the case may be.

PART III

IMPORT AND EXPORT OF PSYCHOTROPIC SUBSTANCE

Control of
import and
export of
psychotropic
substance

4. (1) Except as otherwise provided in these Regulations, no person shall import or export any psychotropic substance unless—

- (a) he has in his possession a valid and subsisting import or export authorisation, as the case may be, relating to such psychotropic substance; and
- (b) such import or export is in accordance with the terms and conditions specified in the import or export authorisation relating thereto.

(2) The provisions of subregulation (1) shall not apply to—

- (a) any person arriving in or leaving Malaysia who carries as part of his personal luggage and solely for his personal use or for the use of his family, a prepared or packaged medicine containing any psychotropic substance, not exceeding such quantities as may be reasonably required for one month's use by one person, which has been lawfully supplied to such person by or on the prescription of a qualified medical practitioner; or
- (b) the international carriage by ships, aircrafts or other forms of international public transport entering or leaving Malaysia of such limited quantities of any psychotropic substance as may be required during their journey or voyage for first aid purposes or emergency cases.

Application
for an import
authorisation

5. (1) An application for an import authorisation in respect of any psychotropic substance shall be made to the Licensing Officer in Form A in the First Schedule.

(2) Upon receipt of an application under subregulation (1), the Licensing Officer may in his discretion issue an import authorisation in Form B in the First Schedule subject to such terms and conditions as may be imposed by such Licensing Officer.

(3) The Licensing Officer shall prepare the import authorisation in triplicate and shall—

- (a) issue two copies to the intending importer who shall forward one copy thereof to the person from whom the psychotropic substance is to be obtained; and
- (b) send the third copy direct to the competent authority of the country from which the psychotropic substance is to be imported.

6. (1) An application for an export authorisation in respect of any psychotropic substance shall be made to the Licensing Officer in Form A in the First Schedule.

Application
for an export
authorisation

(2) Upon receipt of an application under subregulation (1), the Licensing Officer may, upon the production of an import authorisation or an approval of import certificate duly issued by the competent authority of the country to which the psychotropic substance is to be exported, in his discretion issue an export authorisation in Form C in the First Schedule subject to such terms and conditions as may be imposed by such Licensing Officer.

(3) The Licensing Officer shall prepare the export authorisation in triplicate and shall—

- (a) issue two copies to the exporter who shall send one copy with the psychotropic substance to which it refers when such psychotropic substance is exported; and
- (b) send the third copy direct to the competent authority of the country into which the psychotropic substance is to be exported.

7. The fee for an import or export authorisation shall be one hundred ringgit.

Fee for
import or
export authori-
sation

8. At the time of importation or exportation of any psychotropic substance, the importer or exporter shall produce to a Drug Enforcement Officer or any proper officer of Customs the import or export authorisation relating thereto, and such other evidence as such officer may require to satisfy him that the psychotropic substance is being imported or exported lawfully and in accordance with the terms and conditions of such authorisations.

Furnishing of
information
to Drug
Enforcement
Officer, etc

9. Every psychotropic substance specified in the Second Schedule which is imported into Malaysia, or brought to Malaysia in transit, from a country which is a party to the Convention shall be accompanied by a valid and subsisting export authorisation duly issued by the competent authority of the country from which it is exported; and the person having the possession or control of such psychotropic substance shall, on demand by any Drug Enforcement Officer, any police officer not below the rank of Inspector or any senior officer of Customs, produce such export authorisation for his inspection.

Import or
transit of
psychotropic
substance
specified in
the Second
Schedule

Control of
psychotropic
substance
in transit

10. No psychotropic substance while in transit shall be subjected to any process which would change the nature of such psychotropic substance and the packing shall not be altered without the written consent of the Licensing Officer.

PART IV

SALE AND SUPPLY OF PSYCHOTROPIC SUBSTANCE

Control on
the sale and
supply of
psychotropic
substance
for medical
or dental
treatment of
a particular
patient or
animal
treatment of
a particular
animal

11. (1) No psychotropic substance shall be sold or supplied for the purposes of medical or dental treatment of a particular patient or animal treatment of a particular animal except by—

- (a) a registered medical practitioner for the purposes of the medical treatment of his patient only;
- (b) a registered dentist Division I for the purposes of the dental treatment of his patient only;
- (c) a veterinary surgeon to his client for the purposes of animal treatment only;
- (d) a licensed pharmacist upon a prescription prescribed by a registered medical practitioner or a registered dentist Division I or a veterinary surgeon;
- (e) a pharmacist who is for the time being employed in a hospital, clinic or dispensary wholly maintained by the Government, or in an institution approved by the Director General of Health at which human ailments are treated, upon a prescription prescribed by a registered medical practitioner or a registered dentist Division I or a veterinary surgeon;
- (f) any of the persons mentioned in paragraphs (a) to (e) of this regulation and paragraph (f) of subregulation (2) of regulation 3 to a person authorised to administer psychotropic substance, upon a prescription prescribed by a registered medical practitioner or a registered dentist Division I or a veterinary surgeon.

(2) Every prescription for any psychotropic substance prescribed by a registered medical practitioner, registered dentist Division I, or veterinary surgeon shall—

- (a) be in writing, signed and dated by the prescriber thereof;
- (b) state the full name, address and telephone number of the prescriber;
- (c) state the age, full name and address of the patient or, in the case of a prescription by a veterinary surgeon, the full name and address of the person to whom such psychotropic substance is to be delivered;
- (d) indicate the total amount of psychotropic substance to be supplied and the dose; and

- (e) specify the number of times (not exceeding three) the psychotropic substance may be supplied and, if supplied more than once, at what intervals.

(3) No person shall sell or supply any psychotropic substance on a prescription—

- (a) which does not comply with all the requirements of subregulation (2);
- (b) which contravenes the provisions of subregulation (5);
- (c) otherwise than in accordance with the terms of such prescription; or
- (d) which is presented to him more than ninety days after the date of the prescription.

(4) Every person selling or supplying any psychotropic substance on a prescription shall, at the time of selling or supplying the same, endorse upon the face of the prescription above the signature of the prescriber, his name and address and the date on which such psychotropic substance was sold or supplied.

(5) No prescription for any psychotropic substance shall be written wholly or partly in code or in such manner that it is not readily decipherable and capable of being dispensed by any pharmacist.

(6) Notwithstanding any provisions to the contrary, if it shall appear to the seller or supplier that any psychotropic substance is required urgently in cases of emergency and that it is impossible without unreasonable delay to obtain a prescription complying with the requirements of paragraph (d) or (e) of subregulation (1), it shall be lawful for the seller or supplier, after making an entry to that effect in his prescription register for psychotropic substance, upon the verbal or telephoned instructions of a registered medical practitioner, registered dentist Division I or veterinary surgeon, personally known to him, to sell or supply such psychotropic substance without a prescription:

Provided that in every such case the seller or supplier—

- (a) shall take all necessary steps to obtain, and the prescriber shall deliver, a prescription as required in paragraph (d) or (e) of subregulation (1) within one day of the date of such sale or supply;
- (b) shall not sell or supply more than one day's supply of such psychotropic substance; and
- (c) shall take such reasonable steps to ascertain the authenticity of the person who gave the instructions.

(7) Every prescription for the sale or supply of psychotropic substance shall be kept for a period of at least two years from the date of sale or supply.

Control on
the sale and
supply of
psychotropic
substance for
purposes other
than medical
or dental
treatment of
a particular
patient or
animal
treatment of
a particular
animal.

12. (1) Subject to subregulation (2), no psychotropic substance shall be sold or supplied for purposes other than medical or dental treatment of a particular patient or animal treatment of a particular animal except by a licensed pharmacist or a pharmacist in the public service to—

- (a) another licensed pharmacist or pharmacist in the public service;
- (b) a registered medical practitioner, registered dentist Division I or veterinary surgeon for the purpose of medical, dental or animal treatment;

- (c) a person concerned with scientific education or research or chemical analysis in a department, university or institution wholly maintained by the Government or approved by the Director General of Health,
- (d) a person holding a valid and subsisting permit to purchase and use psychotropic substance issued under regulation 15; or
- (e) subject to regulation 4, a purchaser outside Malaysia.

(2) Any person who sells or supplies psychotropic substance—

- (a) as a commercial sample shall be required to have a valid clinical trial import licence issued under the Control of Drugs and Cosmetics Regulations 1984, for such psychotropic substance;
- (b) to a person in Malaysia, in such quantity and at such frequency that appears to be not reasonably required by such person acting in the ordinary course of his profession, function or employment shall be required to obtain—
 - (i) such person's signature in the supply register or a signed written order; and
 - (ii) a written attestation from such person relating to his requirement for such psychotropic substance in such quantity and at such frequency, as the case may be,

before any sale or supply is made.

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Exemption
from
regulation
12 (1).

13. The provisions of subregulation (1) of regulation 12 shall not apply—

- (a) to the sale or supply of psychotropic substances by a licensed pharmacist or a registered pharmacist in the public service, or, in the absence of such person, a registered medical practitioner, who is employed in any hospital, and who sells or supplies within the same hospital such psychotropic substance to the person, and for the purposes, specified in paragraph (f) of subregulation (2) regulation 3; or
- (b) to a case where the psychotropic substance is to be returned to the original supplier within Malaysia who supplied the psychotropic substance in the first instance; provided that such a transaction is noted in the relevant register for psychotropic substance and an official acknowledgement of receipt from such supplier is kept.

PART V

PERMIT TO PURCHASE AND USE PSYCHOTROPIC
SUBSTANCE

14. For the purposes of these Regulations, a permit to purchase and use psychotropic substance shall only be issued to—

- (a) a professional person or tradesman for the purpose of such person's or tradesman's profession or trade only; or
- (b) a game warden or a person assigned to act as a game warden by the relevant authority for such game warden's or person's use on animals only.

Issue of
permit to
purchase and
use psycho-
tropic
substance

15. (1) An application for a permit to purchase and use psychotropic substance shall be made in Form D in the Third Schedule to the Licensing Officer who may in his discretion issue such permit or reject the application.

Application
for a permit
to purchase
and use
psychotropic
substance

(2) A permit to purchase and use psychotropic substance shall be in Form E in the Third Schedule and shall be valid for a specified period not exceeding twelve months.

(3) The Licensing Officer may in issuing a permit under this regulation impose such terms and conditions as he thinks fit, and may from time to time vary the terms and conditions so imposed.

(4) The fee for a permit to purchase and use psychotropic substance shall be one hundred ringgit.

(5) The Licensing Officer may cancel any permit issued under this regulation, if he is satisfied that—

(a) the holder of the permit has contravened any provisions of these Regulations or any terms and conditions imposed by the Licensing Officer; or

(b) the holder of the permit has furnished false, misleading or inaccurate information, or has concealed or failed to disclose material facts, in his application for such permit.

(6) The Licensing Officer shall, before cancelling any permit under subregulation (5), cause to be given to the holder of such permit a notice in writing of his intention to do so and calling the person concerned to show cause why his permit should not be cancelled.

(7) Any person aggrieved by the refusal of the Licensing Officer to issue a permit under subregulation (1), or by the cancellation of any permit under subregulation (5), may appeal in writing to the Minister against such refusal or cancellation within a period of thirty days after the date of such refusal or cancellation.

(8) The Minister may, after hearing the appeal, make such order as he deems fit and that order shall be final.

PART VI

ADMINISTRATION, DISPENSING, COMPOUNDING, MIXING AND MANUFACTURE OF PSYCHOTROPIC SUBSTANCE

Control of
administration
of psychotropic
substance

16. No person shall administer any psychotropic substance unless he is—

(a) a registered medical practitioner;

(b) a registered dentist Division I;

(c) a veterinary surgeon; or

(d) a person acting in accordance with the direction of a registered medical practitioner, registered dentist Division I or a veterinary surgeon,

and the psychotropic substance is administered for the purpose of medical or dental treatment of a particular patient or animal treatment of a particular animal.

Control of
dispensing,
etc. of
psychotropic
substance

17. No person shall dispense, compound or mix any psychotropic substance with any other substance, whether a psychotropic substance or not, for the purpose of it being used for medical, dental or animal treatment unless he is—

- (a) a licensed pharmacist; or
- (b) a pharmacist in the public service.

Control of
manufacture of
psychotropic
substance.

18. No person shall manufacture any psychotropic substance unless he is a licensed pharmacist or a pharmacist in the public service or a person working under the immediate personal supervision of a licensed pharmacist or a pharmacist in the public service:

Provided that where in the process of manufacture, any weighing or measuring of any psychotropic substance or any mixing of any psychotropic substance with any other substances is required to be done under the immediate personal supervision of such person, it shall not be deemed to have been done unless such person has himself checked and endorsed in writing such weighing, measuring or mixing.

PART VII REGISTERS

19. Any person who sells or supplies any psychotropic substance for the purposes of medical or dental treatment of a particular patient or animal treatment of a particular animal shall keep and maintain a register to be called the "Prescription Register For Psychotropic Substance", and shall, on the day such psychotropic substance is sold or supplied, enter or cause to be entered therein true particulars with respect to—

Records for
purposes of
medical, dental
or animal
treatment

- (a) the date on which the psychotropic substance was sold or supplied and the serial number of the entry in such register;
- (b) the name and strength of the psychotropic substance and the quantity sold or supplied;
- (c) the name and address of the patient, or where the prescriber is a veterinary surgeon or the prescription relates to animal treatment, the name and address of the recipient:

Provided that where such sale or supply is made upon a prescription which is repeated it shall be sufficient to enter in the prescription register for psychotropic substance the quantity of the psychotropic substance supplied, the date and the serial number of the sale or supply originally entered.

20. Any person who sells or supplies any psychotropic substance for purposes other than medical or dental treatment of a particular patient or animal treatment of a particular animal shall keep and maintain a register to be called the "Supply Register For Psychotropic Substance", and shall not deliver such psychotropic substance until—

Records for
purposes other
than medical,
dental or
animal
treatment

- (a) he has entered or cause to be entered in such register true particulars with respect to the full name and address of the prospective purchaser or recipient, the date of the sale or supply, the name, strength and quantity of the psychotropic substance sold or supplied and the purposes for which it is stated to be required; and

- (b) the prospective purchaser or recipient has affixed his signature to the entry or has forwarded to the seller or supplier a written order in respect of such sale or supply signed by such person and containing the particulars required to be entered under paragraph (a). Every such written order shall be retained by the seller or supplier and a reference to the file in which such order is retained shall be entered in the supply register for psychotropic substance in place of the prospective purchaser's or recipient's signature.

Records of
manufacture of
psychotropic
substance.

21. Any person who manufactures any psychotropic substance shall keep and maintain a register to be called the "Production Register For Psychotropic Substance", and shall enter therein true particulars with respect to—

- (a) the date on which the psychotropic substance was used for manufacture and the amount used;
- (b) the pharmaceutical dosage form of the psychotropic substance manufactured and the quantity of psychotropic substance found in each unit of the pharmaceutical dosage form;
- (c) the theoretical yield of the psychotropic substance in pharmaceutical dosage form manufactured and the batch number assigned to it;
- (d) the actual yield of the psychotropic substance in pharmaceutical dosage form manufactured;
- (e) the total units of the psychotropic substance in pharmaceutical dosage form sampled for the purpose of quality control; and
- (f) the total units of the psychotropic substance in pharmaceutical dosage form transferred for the purpose of sale or supply.

Keeping and
maintenance
of register.

22. Every person who is required to keep and maintain any register under these Regulation—

- (a) shall use a separate register or a separate part of the register with respect to each type of psychotropic substance;
- (b) shall enter in the register every quantity of psychotropic substance received by him whether for the purpose of sale, supply, manufacture or any other purpose, the total stock of such psychotropic substance in his possession, the name and address of the supplier of such psychotropic substance, and the date on which such psychotropic substance was received by him;
- (c) shall not make any cancellation, obliteration or alteration of an entry in any register, and any correction of an entry must be made by way of a marginal note or a footnote which must specify the date on which the correction is made;
- (d) shall make the required entry in chronological order with respect to the previous entries in the register;
- (e) shall keep the register on the premises to which the register relates to the sale, supply or manufacture of any psychotropic substance in such premises.

23. Every register required under these Regulations shall—
- (a) be in the form of a bound book or in the form which has the written approval of the Licensing Officer; and
 - (b) be preserved for a period of two years from the date of the last entry in such register.

Form of
register

PART VIII

STORAGE AND DISPOSAL OF PSYCHOTROPIC SUBSTANCE

24. (1) Any person who possesses any psychotropic substance for the purposes of manufacturing, dispensing, compounding, mixing, sale, supply, education, research or chemical analysis, shall store such psychotropic substance in a room, cabinet, safe or receptacle which shall remain locked except in so far as may necessary to have such room, cabinet, safe or receptacle opened in order to—

Control of
storage of
psychotropic
substance

- (a) carry out the purposes described above in connection with the psychotropic substance stored therein;
- (b) keep other psychotropic substance in such room, cabinet, safe or receptacle; or
- (c) conduct a stock check of the psychotropic substance stored therein.

(2) Any room, cabinet, safe or receptacle used to store any psychotropic substance shall only be locked and unlocked by the person authorised to possess such psychotropic substance and the keys to such room, cabinet, safe or receptacle shall be kept by him only.

(3) For the purposes of this regulation, any room, cabinet, safe or receptacle used for storing any psychotropic substance shall be so constructed and with reasonably sufficient security measures in order to prevent theft or diversion of the psychotropic substance stored therein.

25. (1) No person who is required to keep and maintain a register under regulation 19, 20 or 21 shall dispose of the psychotropic substance in his possession except in the presence and in accordance with the instructions of a Drug Enforcement Officer.

Control on
disposal of
psychotropic
substance

(2) True particulars of the date of disposal and the quantity of the psychotropic substance which is disposed of shall be entered in the register to which it relates and shall be acknowledged by the Drug Enforcement Officer.

(3) the Drug Enforcement Officer may, for the purpose of analysis, demand, take or obtain a sample of any psychotropic substance which is to be disposed of.

(4) For the purposes of this regulation, "dispose of" and its grammatical variations, in relation to psychotropic substance, mean to bury, burn or otherwise render in a manner with no or negligible risk of recovery.

PART IX

LABELLING OF PSYCHOTROPIC SUBSTANCE

Control on
labelling of
psychotropic
substance

26. (1) Except as otherwise provided in these Regulations, no person shall keep, have in his possession or under his control, any psychotropic substance otherwise than in a container labelled, in a conspicuous position thereon and in a clear and distinct manner, with—

- (a) the name of the psychotropic substance; and
- (b) the word "Poison" in Bahasa Malaysia, English, Chinese and Tamil printed in red or on a red background.

Provided that the requirement of paragraph (b) of this regulation shall not apply to a container which is enclosed in an unbroken case or package as received from the manufacturer of the psychotropic substance outside Malaysia.

(2) Where any container of any psychotropic substance is enclosed in a box or covering, such box or covering shall be labelled in the same manner as the container.

Provided that nothing in this subregulation shall make it necessary to label any transparent cover or wrapper, or any hamper, packing case, crate or other covering used solely for the purpose of transportation or delivery.

(3) The requirement of paragraph (b) of subregulation (1) shall not apply to any psychotropic substance contained in an ampoule, cachet or similar article, if every box or other covering in which the ampoule, cachet or article is enclosed is duly labelled.

(4) Nothing in this regulation shall apply to any psychotropic substance kept or possessed by, or under the control of, a person in the case where such psychotropic substance was sold or supplied to him by or upon a prescription prescribed by a registered medical practitioner, registered dentist Division I or veterinary surgeon for medical, dental or animal treatment.

Labelling
requirements
for purposes
other than
medical,
dental or
animal
treatment

27. No person shall sell or supply any psychotropic substance for purposes other than medical or dental treatment of a particular patient or animal treatment of a particular animal unless the container of such psychotropic substance is labelled conspicuously and distinctly—

- (a) in the manner specified in subregulation (1) of regulation 26;
- (b) in the case of a medicine which contains psychotropic substance as one of the ingredients thereof—
 - (i) with the particulars of the proportion in which the psychotropic substance contained in such medicine bears to the total ingredients;
 - (ii) with the warning "Caution: This preparation may be habit forming on prolonged use"; and
- (c) with the name of the seller or supplier and the address of the premises on which it was sold or supplied:

Provided that this requirement does not apply in the case of a container which had been labelled with the name of the seller or supplier and the address of the premises on which it was previously sold or supplied.

28. Where any psychotropic substance is sold or supplied for the purpose of medical or dental treatment of a particular patient or animal treatment of a particular animal, the container of such psychotropic substance shall be labelled in a conspicuous and distinct manner with—

Labelling
requirements
for purposes
of medical or
dental or
animal
treatment

- (a) the full name and address of the seller or supplier;
- (b) the full name of the patient or purchaser;
- (c) adequate directions for the use of such psychotropic substance;
- (d) the date when such psychotropic substance was sold or supplied; and
- (e) the name and strength of the psychotropic substance.

PART X

POWER OF MINISTER TO MAKE PROHIBITORY ORDER

29. (1) Where—

- (a) a person who is a registered pharmacist, registered medical practitioner, registered dentist Division I or veterinary surgeon has been convicted of an offence relating to psychotropic substances under the Ordinance or these Regulations; or
- (b) the Minister has reasonable ground to believe that a person who is a registered medical practitioner, registered dentist Division I or a veterinary surgeon is prescribing, administering or supplying or directing the administration of psychotropic substances in an irresponsible manner,

Order
prohibiting
possession,
sale, supply
etc. of
psychotropic
substances

the Minister may, subject to and in accordance with regulation 30, make an order under subregulation (2) in respect of that person.

(2) An order under this subregulation in respect of any person shall be an order—

- (a) if that person is a registered pharmacist, prohibiting him from having in his possession, selling, supplying, manufacturing, compounding, mixing, dispensing and supervising the manufacture of such psychotropic substances as may be specified in the order;
- (b) if that person is a registered medical practitioner, prohibiting him from having in his possession, selling, supplying, prescribing, dispensing, mixing, administering and from directing the administration of such psychotropic substances as may be specified in the order;
- (c) if that person is a registered dentist Division I or a veterinary surgeon, prohibiting him from having in his possession, selling, supplying, prescribing, administering and from directing the administration of such psychotropic substances as may be specified in the order.

Procedure
before
making an
order under
regulation
29 (2)

30. (1) Before making an order under subregulation (2) of regulation 29, the Minister shall serve or cause to be served on the person against whom the order is proposed to be made a written notice informing him of—

- (a) the terms of the proposed order;
- (b) the ground on which the proposed order is to be made; and
- (c) his right to make a written representation to the Minister within the period of thirty days beginning with the date of the service of the notice.

(2) If any such representations are received by the Minister within the period aforesaid, he shall refer the case to the relevant advisory committee constituted in accordance with the following provisions of these Regulations; and it shall be the duty of the advisory committee to consider the case and to advise the Minister as to the exercise of his power under subregulation (3).

(3) After the expiration of the period of thirty days and, in the case of a reference to an advisory committee under subregulation (2), after considering the advice of that committee, the Minister may—

- (a) make in respect of such person the relevant order under subregulation (2) of regulation 29; or
- (b) order that no further proceedings under this regulation shall be taken in the case.

31. (1) The provisions of the Fourth Schedule shall have effect with respect to the constitution and procedure of any advisory committee appointed for the purpose of regulation 30.

Provisions
supplementary
to regulations
29 and 30.

(2) The Minister shall cause a copy of any order made by him under subregulation (2) of regulation 29 to be served on the person to whom it applies and notice of it to be published in the *Gazette*.

(3) The Minister may by order cancel or suspend any order made by him under subregulation (2) of regulation 29 or cancel any order of his under this subregulation by which the order so made is suspended.

(4) Any order made under subregulation (3), or under subregulation (2) of regulation 29, shall take effect when a copy of it is served on the person to whom it applies or a notice of it is published in the *Gazette*, whichever is the earlier.

(5) Any person who contravenes any order made under subregulation (2) of section 29 shall be guilty of an offence.

PART XI

GENERAL

32. Notwithstanding the provisions of regulations 3, 11 (1) and 17, a pharmacy assistant or, in his absence, a medical assistant, employed in any hospital, clinic or institution wholly maintained by the Government at which human ailments are treated, may—

Example of
for pharmacy
assistant
and medical
assistant.

- (a) possess, compound or mix; and
- (b) upon a prescription prescribed by a registered medical practitioner or a registered dentist Division 1, supply or dispense,

any psychotropic substance for the purposes of medical treatment of a patient:

Provided that such possession, supply, dispensing, compounding or mixing is made or conducted in accordance with the provisions of these Regulations relating thereto.

33. (1) The master of any ship is deemed to be authorised to purchase and possess, and a licensed pharmacist is deemed to be authorised to sell or supply, such limited quantities of any psychotropic substance certified by a Port Health Officer of the port of call of the ship as may be necessary for the equipment of the ship for the purpose of first-aid or emergency cases.

Exemption
for master
of a ship

(2) Every such sale or supply made under subregulation (1) shall be made in the manner prescribed under regulation 20, and that the certificate issued by the Port Health Officer shall be taken to mean a signed written order,

Exemption
of fees for
government
officers

34. Any officer of the Government who imports, exports or requires a permit to purchase and use psychotropic substance in the course of carrying out his duty on account of the Government shall be exempted from any fees specified in these Regulations.

Duty to give
information,
etc.

35. Any person who sells, supplies, manufactures, uses or otherwise has in his possession, any psychotropic substance shall—

- (a) answer truthfully any questions and inquires put to him by a Licensing Officer, Drug Enforcement Officer, police officer not below the rank of Inspector or senior officer of Customs with respect to his obtaining, selling, supplying, manufacturing or using psychotropic substances; and
- (b) in the case of a person who sells, supplies or manufactures psychotropic substance, disclose or produce to any such officer on demand the stock of psychotropic substance in his possession, and the register, book or other document relating to dealing in any such psychotropic substance.

Offences for
giving of false
particulars, etc.

36. No person shall—

- (a) furnish to any Licensing Officer, Drug Enforcement Officer, police officer or senior officer of Customs as true, information which he knows or has reason to believe to be false;
- (b) enter in any register required to be kept under these Regulations any particulars which he knows to be false or does not believe to be true;
- (c) make a false document for the purpose of obtaining any psychotropic substance;
- (d) use as genuine any false document knowing it to be false for the purpose of obtaining the supply of psychotropic substance;
- (e) for the purpose of obtaining any psychotropic substance, make a declaration or statement which was false in any particular.

FIRST SCHEDULE
POISONS ORDINANCE 1952

POISONS (PSYCHOTROPIC SUBSTANCES) REGULATIONS 1989
(Regulations 5 (1), 6 (1))

FORM A

APPLICATION FOR AUTHORISATION TO IMPORT/ EXPORT* PSYCHOTROPIC SUBSTANCES

**The Licensing Officer,
Ministry of Health, Malaysia,
Kuala Lumpur.**

1.
(name of applicant)

a practising
(state profession)

at _____
(business address)

hereby apply for an authorisation to import/export* the psychotropic substance(s) specified hereunder.

2. The consignment of psychotropic substance(s) (hereinafter referred to as "the consignment") referred to in this application is to be imported from
exported to:

with premises address at

and will pass through the Malaysian Custom check point at

3. The consignment consists of—

(a) the following psychotropic substance(s) in pharmaceutical dosage form

<i>Proprietary name</i>	<i>International non-proprietary name (INN) (if any)</i>	<i>Dosage form (tablet, ampoule, etc.)</i>	<i>Total units of dosage form</i>	<i>Account of psychotropic substance in each unit and total equivalent amount as base</i>

(b) the following psychotropic substance(s) in non-pharmaceutical dosage form:

<i>International non-proprietary name (INN), (lacking which the chemical name)</i>	<i>Form (solution, powder, etc.)</i>	<i>Total quantity of form</i>	<i>Total amount of psychotropic substance and equivalent amount as base</i>

4. Enclosed herewith is Money Order/Postal Order/Draft* No.
for the sum of Ringgit being fee
for the import/export* authorisation in the event that my application is approved

I, the undersigned, hereby declare that all the above-mentioned particulars are true and correct in any respect to the best of my knowledge and belief.

Date

.....
Signature of applicant

* Delete where not applicable

POISONS ORDINANCE 1952

POISONS (PSYCHOTROPIC SUBSTANCES) REGULATIONS 1989

(Regulation 5 (2))

FORM B

CONVENTION OF PSYCHOTROPIC SUBSTANCES 1971

IMPORT AUTHORISATION

Import Authorisation No.

In pursuance of regulation 5 (2) of the Poisons (Psychotropic Substances) Regulations 1989, I, the Licensing Officer, hereby authorise

.....
(here insert name and full postal address of importer)

(hereinafter referred to as "the importer") to import from

.....
(here insert name and full address of exporter)

the following psychotropic substance(s) in the specified quantity:

.....
.....
.....
.....

This authorisation is subject to the following conditions:

- (a) the psychotropic substance(s) shall be imported through the Malaysian Customs check point at and
- (b) at the time of importation, the psychotropic substance(s) and this authorisation shall be produced before the Drug Enforcement Officer or any proper officer of Customs, whose endorsement shall be obtained in the space provided in this authorisation.

This authorisation is valid from to

Date.....

.....
Licensing Officer

ENDORSEMENT BY CUSTOMS/DRUG ENFORCEMENT OFFICER

I hereby certify that the psychotropic substances specified in this
authorisation have been duly imported on
(Specify amount if it varies from that specified in the authorisation)

Signature:.....

Official Stamp

Name:.....

(Enter particulars below if importation is conducted by agent of importer)

Name of agent:.....

NRIC No:

Signature of agent:

POISONS ORDINANCE 1952

POISONS (PSYCHOTROPIC SUBSTANCES) REGULATIONS 1989

(Regulation 6 (2))

FORM C

CONVENTION ON PSYCHOTROPIC SUBSTANCES 1971

EXPORT AUTHORISATION

Export Authorisation No:

In pursuance of regulations 6 (2) of the Poisons (Psychotropic Substances)
Regulations 1989, I, the Licensing Officer, hereby authorise

(here insert name and full postal address of importer)

(hereinafter referred to as "the exporter") to export to

(here insert name and address of importer)

the following psychotropic substance(s) in the specified quantity:

.....
.....
.....

This authorisation is subject to the following conditions:

- (a) the psychotropic substance(s) shall be exported through the Malaysian
Customs check point at
and
- (b) at the time of exportation, the psychotropic substance(s) and this
authorisation shall be produced before the Drug Enforcement Officer or
any proper officer of Customs, whose endorsement shall be obtained in
the space provided in this authorisation.

This authorisation is valid from to

Date:.....

.....
Licensing Officer

ENDORSEMENT BY MALAYSIAN CUSTOMS/DRUG ENFORCEMENT OFFICER	ENDORSEMENT BY GOVERN- MENT OF IMPORTING COUNTRY
I hereby certify that the psychotropic substances specified in this authori- sation have been duly exported on	I hereby certify that the psychotropic substances specified in this authori- sation have been duly imported. (Specify amount imported if it varies from that stated in the authorisation)
Signature:	Signature:
Official Stamp	Official Stamp
Name:	Designation:
	Date:
	(Please return copy to: The Licensing Officer, Ministry of Health, Malaysia)

SECOND SCHEDULE

(Regulation 9)

LIST OF PSYCHOTROPIC SUBSTANCES TO BE ACCOMPANIED WITH EXPORT AUTHORISATION ON IMPORT OR WHILE IN TRANSIT

1. Amfetamine (($\pm$)-2-amino-1-phenylpropane)
Dexamfetamine ((+)-2-amino-1-phenylpropane)
Fenetylline (*dl*-3, 7-dihydro-1, 3-dimethyl-7-(2-[(1-methyl-2-phenylethyl)-
amino] ethyl)-1H-purine-2, 6-dione)
Levamfetamine (*l*- α -methylphenethylamine)
Levomethamphetamine (*l*-N, α -dimethylphenethylamine 3-(*o*-chlorophenyl)-
2methyl-4 (3H)-quinazolinone)
Mecloqualone (3-(*o*-chlorophenyl)-2-methyl-4 (3H)-quinazolinone)
Methamfetamine ((+)-2-Methylamino-1-phenylpropane)
Methamphetamine racemate (($\pm$)-N, α -dimethylphenethylamine)
Methaqualone (2-methyl-3-*o*-tolyl-4 (3H)-quinazolinone)
Methylphenidate (2-phenyl-2-(2-piperidyl) acetic acid, methylester)
Phencyclidine (1-(1-phenylcyclohexyl) piperidine)
Phenmetrazine (3-methyl-2-phenylmorpholine)
Secobarbital (5-allyl-5-(1-methylbutyl) barbituric acid)
2. The salts of the substances specified in paragraph 1 of this Schedule
wherever the existence of such salt is possible
3. Any preparation, solution, compound, mixture or product containing one or
more of the substances specified in paragraphs 1 and 2 of this Schedule.

THIRD SCHEDULE
(Regulations 15 (1), 15 (2))
POISONS ORDINANCE 1952

POISONS (PSYCHOTROPIC SUBSTANCES) REGULATIONS 1989
(Regulation 15 (1))

FORM D

**APPLICATION FOR A PERMIT TO PURCHASE AND USE
PSYCHOTROPIC SUBSTANCES**

To: The Licensing Officer

Through

I, ... being engaged in the business of
whose business address is
..... hereby apply for a permit to
purchase and use the following psychotropic substance(s):

*International
Non-Proprietary
Name (INN) and
form*

Strength

Quantity

Office Use

for the purpose of

2. Enclosed herewith is Money Order/Postal Order/Draft* No.
for the sum of Ringgit, being fee for the
above-mentioned permit.

Date:

Signature of applicant

POISONS ORDINANCE 1952
POISONS (PSYCHOTROPIC SUBSTANCES) REGULATIONS 1989
(Regulation 15 (2))

FORM E

PERMIT TO PURCHASE AND USE PSYCHOTROPIC SUBSTANCE

Permit No.

In pursuance of regulation 15 (1) of the Poisons (Psychotropic Substances)
Regulations 1989, I, the Licensing Officer, hereby grant this permit to
to purchase the following psychotropic substance(s) not exceeding the amount
specified:

to be used only for the purpose of
and subject to the conditions overleaf.

This permit is valid from to

Date:
Licensing Officer

CONDITIONS OF PERMIT

1. The permit holder shall maintain a bound record book or a separate part of such record book for each of the psychotropic substance specified in this permit, and shall enter therein the name and form of the psychotropic substance, name and address of supplier, date and amount received, date and amount used and stock in balance.
2. The permit holder shall inform the Licensing Officer by registered post of each purchase of psychotropic substance made, not later than fourteen days after the receipt of the psychotropic substance stating the name and form of psychotropic substance received, amount and date received, and the name and address of supplier.

FOURTH SCHEDULE (Regulation 31)

1. The advisory committee shall consist of—
 - (a) in the case of a registered pharmacist, the Director General of Health, the Director of Pharmaceutical Services, and two registered pharmacists not in the public service appointed by the Minister;
 - (b) in the case of a registered medical practitioner, the Director General of Health, the Director of Medical Services, and two registered medical practitioners not in the public service appointed by the Minister;
 - (c) in the case of a registered dentist Division I, the Director General of Health, the Director of Dental Services, and two registered dentists Division I not in the public service appointed by the Minister; and
 - (d) in the case of a veterinary surgeon, the Director General of Health, the Director of Veterinary Services, and two veterinary surgeons not in the public service appointed by the Minister.
2. (1) The person against whom the order is to be made shall be entitled to appear before and be heard by the advisory committee in person.
(2) An advisory committee may regulate its own procedure.

Made the 14th November 1988.

[KK. (S)-484 Sk. 10 Bhg. 1 (4); PN. (PU²) 127/III.]

DATO' CHAN SIANG SUN,
Minister of Health

(To be laid before the House of Representative pursuant to section 30 (3) of the Poisons Ordinance 1952.)



LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

BAHAMAS

Communicated by the Government of the Bahamas

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF TREATIES FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

31 March, 1988

* Note by the Secretariat: The present document is a direct reproduction of the texts communicated to the Secretariat.

No 2 of 1988

An Act to provide for the implementation of treaties for
Mutual Legal Assistance in Criminal Matters.

(Date of Assent: 31 March, 1988)

Enacted by the Parliament of The Bahamas.

Short title
and
commencement

1.—(1) This Act may be cited as the Mutual Legal Assistance (Criminal Matters) Act 1988.

(2) This Act shall come into operation on such date as the Minister may by notice in the Gazette appoint; and different dates may be appointed for different provisions of this Act.

Interpretation

2.—(1) In this Act —

“Competent Authority” means the Attorney-General;

“data” means representation in any form of information or concepts;

“foreign state” means a state that is a party to a treaty;

“offence” means an offence within the meaning of the relevant treaty;

“record” means any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device;

“request” means a request for assistance presented pursuant to a treaty;

“treaty” means a treaty, convention or other international agreement providing primarily for mutual legal assistance in criminal matters between a foreign state and The Bahamas and referred to in the Schedule;

“law enforcement officer” means any peace officer, a member of the Royal Bahamas Defence Force, a Customs Officer as defined in the Customs Management Act 1976, an officer of the Department of Immigration or an officer in the Prison Service when acting in relation to the carrying out of any request approved by the Competent Authority.

(2) Subject to subsection (1) other terms and expressions used in this Act shall unless the context otherwise requires have the meanings assigned to them in the relevant treaty.

3.—(1) In the event of any inconsistency between the provisions of this Act and of any other written law, other than the provisions of an Act prohibiting the disclosure of information or prohibiting its disclosure except under certain conditions, the provisions of this Act prevail to the extent of the inconsistency.

Inconsistency
with other
laws.

(2) Nothing in this Act or a treaty shall be construed as to abrogate or derogate from an agreement, arrangement or practice respecting co-operation between any governmental agency of The Bahamas and a foreign or international authority or organisation.

4.—(1) Where a request is presented in accordance with the provisions of a treaty to the Competent Authority by a foreign state the Competent Authority shall deal with that request in such a manner as is requisite to discharge the obligations of The Bahamas under that treaty.

Execution
of request
by Competent
Authority.

(2) The Competent Authority may not give effect by means of the provisions of this Act to a request unless the relevant treaty provides for mutual assistance with respect to the subject matter of the request.

5.—(1) Where the Competent Authority approves of a request to enforce the payment of a fine imposed by a court of criminal jurisdiction of a foreign state the enforcement thereof may be pursued in a court of The Bahamas by way of civil proceedings instituted in the name of the foreign state as if the fine had been imposed by the latter court.

Requests
relating
to fines.

(2) No proceedings under subsection (1) shall be instituted more than five years after the fine was imposed.

6.—(1) The provisions of any written law respecting the grant of authority to and powers and privileges of a law enforcement officer to carry out searches or seizures shall extend with such modifications as the circumstances require to any search or seizure which is the subject matter of a request approved by the Competent Authority.

(2) Where the Competent Authority approves of a request for a search or seizure to be carried out in The Bahamas regarding an offence with respect to which the foreign state has jurisdiction the Competent Authority shall ensure that all documents or information necessary to apply for a search warrant are provided to the relevant authority concerned in the execution of the request.

(3) The authority to whom an application is made pursuant to subsection (2) for the issue of a search warrant may issue the warrant authorising a law enforcement officer named therein to execute it anywhere in The Bahamas where the authority is satisfied by statements under oath that there are reasonable grounds for believing that —

- (a) an offence has been committed within the foreign state which has made the request for the relevant search;
- (b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in a building, vessel, aircraft, receptacle or other place in The Bahamas; and
- (c) it would not, in the circumstances, be appropriate for an order under section 7(1) to be made.

(4) A law enforcement officer who executes a search warrant in relation to a request shall before entering the place or premises to be searched or as soon as practicable thereafter give a copy of the warrant to any person who is present and appears to be in

charge of the place or premises or where the place or premises are unoccupied the officer shall on entering or as soon as practicable thereafter cause a copy of the warrant to be affixed in a prominent position within the place or premises.

(5) A law enforcement officer on executing a search warrant in relation to a request may in addition seize any thing that he believes on reasonable grounds will afford evidence of, has been obtained by, or used in, or is intended to be used in, the commission of an offence under the laws of The Bahamas.

(6) No record or thing seized for the purpose of compliance with a request shall be sent to the foreign state until the Competent Authority is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing seized.

7.—(1) Where the Competent Authority approves of a request to obtain evidence to be used in proceedings in a foreign state a court to which any application is made by the Competent Authority for the purpose shall have jurisdiction to entertain the application and to make such order as it sees fit to give effect to the request having regard to the provisions of the treaty under which the request was made.

(2) Subject as hereinafter provided in this section the procedure applicable to any application under any other written law pertaining to the obtaining of evidence for use abroad and the mode of carrying out and enforcement of any order of the court therefor shall mutatis mutandis apply to an application referred to in subsection (1).

(3) At the conclusion of an examination carried out for the taking of evidence in relation to a request the Registrar of the Supreme Court shall forward duly certified under the seal of the court to the Competent Authority all depositions, exhibits or things taken or seized pursuant to the order obtained for the examination.

(4) A person named in an order made under subsection (1) may refuse to answer one or more questions or to produce certain records or things to the examiner if not a judge if —

- (a) the refusal is based on a law in force in The Bahamas;
- (b) to require the person to answer the questions or to produce the records or things would constitute a breach of a privilege recognized by a law in force in the foreign state that presented the request;
- (c) to answer the questions or produce the records or things would constitute the commission by the person of an offence against a law in force in the foreign state that presented the request.

(5) Where a request by the Competent Authority is presented to a foreign state and a person there refuses to answer one or more questions or to give up certain records or things by reason of a law in force in The Bahamas a judge may determine the validity of the refusal on an application made, after reasonable notice to the person, by the Competent Authority.

(6) Where a person refuses to answer a question or to produce a record or thing, the examiner shall continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

(7) A person named in an order made under subsection (1) who refuses to answer one or more questions or to produce certain records or things shall, within five days, give to the examiner if not a judge a detailed statement in writing of all the reasons on which the person bases the refusal to answer each question that the person refuses to answer or to produce each record or thing that the person refuses to produce.

(8) The examiner shall make a report to the Registrar accompanied by —

- (a) a transcript of every examination made in the relevant matter;
- (b) a general description of every record or thing produced at the examination pursuant to the order appointing the examiner; and
- (c) a copy of every statement given under subsection (7) of the reasons for a refusal to answer any questions or to produce any record or thing.

(9) Where the Registrar is in possession of a statement referred to in paragraph (c) of subsection (8) the Registrar shall refer the documents and anything received under that subsection to a judge who shall determine whether the reasons contained in any statement given under subsection (7) that purport to be based on a law in force in The Bahamas are well-founded and where the judge determines that they are, that determination shall be mentioned in any order that the judge makes under subsection (11) but where the judge determines that they are not, the judge shall order that the person named in the order made under subsection (1) answer the questions or produce the records or things.

(10) A copy of every statement given under subsection (7) that contains reasons that purport to be based on a law in force in the foreign state shall be appended to any order that the judge makes under subsection (11).

(11) A judge to whom a report is made under subsection (8) may order that there be sent to the foreign state the report and any record or thing produced, as well as a copy of the order accompanied by a copy of any statement given under subsection (7) that contains reasons that purport to be based on a law in force in the foreign state as well as any determination of the judge made under subsection (9) that the reasons contained in a statement given under subsection (7) are well-founded.

(12) The Competent Authority may when complying with a request upon receipt of the results of an examination for the tak-

ing of evidence make those results available to the foreign state subject to such terms and conditions as are permitted by the relevant treaty.

(13) No record or thing that may be sent pursuant to subsection (11) shall be so sent until the Competent Authority is satisfied that the foreign state that made the request has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

(14) The execution of an order made under subsection (1) that was not completely executed because of a refusal, by reason of a law in force in the foreign state, to answer one or more questions or to produce certain records or things to an examiner may be continued where a person designated by the foreign state determines that the reasons are not well-founded and the foreign state so advises the Competent Authority.

(15) No person named in an order made under subsection (1) whose reasons for refusing to answer a question or to produce a record or thing are determined, in accordance with subsection (14) not to be well-founded, shall, during the continued execution of the order, refuse to answer that question or produce that record or thing to the examiner except with the permission of a judge.

8. A person named in an order made under section 7(1) commits a contempt of court if the person refuses to answer a question or to produce a record or thing to the examiner —

Contempt of Court.

- (a) without giving the detailed statement required by section 7(7); or
- (b) where the person was already asked the same question or requested to produce the same record or thing and all of the reasons on which the person based the earlier refusal were determined not to be well-founded by —
 - (i) a judge, if the reasons were based on a law in force in The Bahamas; or
 - (ii) a person designated by the foreign state by a court of the foreign state, if the reasons were based on a law in force in the foreign state.

9.—(1) Where the Competent Authority approves a request to have a person who is detained in lawful custody by order of a court transferred to a foreign state the Competent Authority may, where the Competent Authority is satisfied that the person de-

Request relating to transfer of persons in custody.

tained consents to the transfer for the purposes of the request, submit to —

- (a) in the case of a person who is detained but not undergoing a term of imprisonment, the court which ordered the detention, an application for the transfer of the person detained; and
- (b) in the case of a person who is undergoing a term of imprisonment, the Superintendent of Prisons a transfer order under the hand of the Competent Authority.

(2) The application or transfer order mentioned in subsection (1) shall —

- (a) state the name of the detained person;
- (b) state the place of confinement of the detained person;
- (c) designate a person or class of persons into whose custody the detained person is sought to be delivered;
- (d) state the place to which the detained person is sought to be transferred;
- (e) state the reasons why the detained person is sought to be transferred; and
- (f) specify a period of time at or before the expiration of which the detained person is to be returned.

(3) Where a court is in receipt of an application under subsection (1) and is satisfied that the detained person consents to the transfer to the foreign state the court may issue a transfer order to the Superintendent of Prisons or other person in whose custody the person is being detained and in respect thereto the court may have the person detained to be brought up and be examined with respect to the transfer.

(4) A transfer order issued pursuant to subsection (1)(b) or (3) shall be sufficient authority for the Superintendent of Prisons or other person in whose custody the person is detained or imprisoned to permit the removal of the person named in the order from such custody in accordance with the directions of the Competent Authority.

(5) Directions issued by the Competent Authority for the transfer of a person shall —

- (a) set out the name of the detained person and his place of confinement;
- (b) direct the person who has custody of the detained person to deliver him into the custody of a person who is designated in the directions or who is a member of a class of persons so designated;
- (c) direct the person designated under paragraph (b) to take the detained person to the foreign state and, on the return of the detained person to The Bahamas, to return him to the place of confinement where he was when the order was made;
- (d) state the reasons for the transfer; and
- (e) fix the period of time at or before the expiration of which the detained person must be returned.

(6) A person transferred pursuant to subsection (4) shall be deemed to be in lawful custody during the transfer and during the period in which he is in the foreign state in accordance with the transfer and such time shall count for all purposes under the laws of The Bahamas as if he had been in custody in The Bahamas.

(7) A person who is in lawful custody in a foreign state and who is transferred to The Bahamas in consequence of a request made by the Competent Authority to that state shall be deemed to be in lawful custody.

(8) Any person who is the subject of a transfer referred to in subsection (6) or (7) may be released from custody upon such conditions as to bail or otherwise as may be agreed between the Competent Authority of The Bahamas and that of a foreign state and shall in any event be released no later than the date on which he would have been released if he had not been so transferred.

(9) The Competent Authority may give directions for the detention in The Bahamas of a person who has been transferred to The Bahamas out of custody in a foreign state pursuant to a request by the Competent Authority and any such directions shall be sufficient authority for the detention and shall not be questioned in or be the subject of any proceedings in The Bahamas.

10.—(1) Where the Competent Authority approves of a request to have an exhibit that was admitted in evidence in a criminal proceeding in a court lent to the requesting state the Compe-

Provision of
assistance in
lending exhibits

tent Authority may make an application to the court that has possession of the exhibit for a loan order.

(2) Reasonable notice of the intended application should be given to the parties concerned in the criminal proceeding and shall —

- (a) contain a description of the exhibit requested to be lent;
- (b) designate a person or class of persons to whom the exhibit is sought to be given;
- (c) state the reasons for the request, as well as contain a description of any tests that are sought to be performed on the exhibit and a statement of the place where the tests will be performed;
- (d) state the place or places to which the exhibit is sought to be removed; and
- (e) specify a period of time at or before the expiration of which the exhibit is to be returned.

(3) Where the court to which an application under subsection (1) is made is satisfied that the foreign state has requested the loan for a fixed period and has agreed to comply with the terms and conditions that the court proposes to include in any loan order, the court may after considering any representations of the persons to whom notice of the application was given in accordance with subsection (2) make a loan order.

(4) A loan order made under subsection (3) shall —

- (a) contain a description of the exhibit;
- (b) order the person who has possession of the exhibit to give it to a person designated in the order or who is a member of a class of persons so designated;
- (c) contain a description of any tests thereby authorized to be performed on the exhibit, as well as a statement of the place where the tests may be performed;
- (d) fix the place or places to which the exhibit may be removed; and
- (e) fix the period of time at or before the expiration of which the exhibit must be returned.

(5) A loan order made under subsection (3) may include any terms or conditions that the court making it considers desirable, including those relating to the preservation of the exhibit.

(6) A court that made a loan order may vary its terms and conditions.

(7) The burden of proving that an exhibit lent to a foreign state pursuant to a loan order made under subsection (3) and returned to The Bahamas is not in the same condition as it was when the loan order was made or that it was tampered with after the loan order was made is on the party who makes that allegation and, in the absence of that proof, the exhibit shall be deemed to have been continuously in the possession of the court which made the loan order.

11.—(1) A record or a copy thereof and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, sent to the Competent Authority by a foreign state in accordance with a request made by The Bahamas is not inadmissible in evidence in any proceedings by reasons only that a statement contained in the record, copy, affidavit, certificate or other statement is hearsay or a statement of opinion.

Admissibility
of evidence
obtained
abroad

(2) For the purpose of determining the probative value of a record or copy thereof admitted in evidence under this Act a court or other tribunal may examine the record or copy, receive evidence orally or by affidavit, including evidence as to the circumstances in which the information contained in the record or copy was written, recorded, stored or reproduced, and draw any reasonable inference from the form or content of the record or copy.

(3) A thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a foreign state as to the identity and possession of the thing from the time it was obtained until its sending to the Competent Authority by the foreign state in accordance with a request by The Bahamas, are not inadmissible in evidence in any proceedings by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion.

(4) An affidavit, certificate or other statement mentioned in the preceding subsections is, in the absence of evidence to the contrary, proof of the statements contained therein without proof of the signature or official character of the person appearing to have signed the affidavit, certificate or other statement.

(5) Unless the court decides otherwise, no record or copy thereof, no thing and no affidavit, certificate or other statement mentioned in subsection (1), (2), or (3) shall be received in evidence in any proceedings unless the party intending to produce it has given to the party against whom it is intended to be produced

four days' notice, excluding holidays, of that intention, accompanied by a copy of the record, copy, affidavit, certificate or other statement.

(6) The service of a document in a foreign state may be proved by affidavit of the person who served it.

Confidentiality

12.—(1) Subject to section 11(5) a record sent to the Competent Authority by a foreign state in accordance with a request made by the Competent Authority is privileged and no person shall disclose to anyone the record or its purport or the contents of the record or any part thereof before the record, in compliance with the conditions on which it was so sent, is made public or disclosed in the course or for the purpose of giving evidence.

(2) No person in possession of a record mentioned in subsection (1) shall be required in connection with any legal proceedings to give evidence relating to any information that is contained in the record or to produce the record.

Powers ancillary
to execution of
a request

13.—(1) Where the execution of a request requires the issue under the laws of The Bahamas of a subpoena or other necessary order by a judge, magistrate or justice of the peace a certificate given by the Competent Authority that the issue of any such document or order is required for the purpose of a request shall subject to section 6(3) be sufficient authority for the issue or making of same without further enquiry.

(2) Notwithstanding the provisions of any other law if the execution of any request approved by the Competent Authority requires the service of any document or the seizure of any article any law enforcement officer shall assist in such service or seizure to the same extent as he would be required so to do in the case of the service or seizure authorised by a court and for that purpose he shall be deemed to be acting in the execution of his duty and to have the same powers and privileges as if acting in pursuance of the authority of the court.

14.—(1) The Minister may make Regulations for the carrying into effect of the other provisions of this Act.

(2) The Minister may make Orders for the modification and adaptation of any law as he considers necessary for the purpose of giving effect to any treaty or any request made thereunder or for Orders amending the Schedule.

(3) Any Order made by the Minister under subsection (2), other than an Order amending the Schedule, shall be subject to affirmative resolutions of both the House of Assembly and the

Senate so that no Order shall come into operation unless and until approved by those resolutions.

15. Subject to section 9(9) any person who enters The Bahamas in response to a request made to a foreign state by the Competent Authority for the appearance of that person in accordance with a treaty, while in The Bahamas shall not be subject to service of any process or subjected to any restriction of his personal liberty by reason of anything done or omitted by him in The Bahamas or elsewhere prior to his departure from that foreign state in conformity with such request:

Protection
of persons
appearing in
response to
a request

Provided that the immunity conferred by the foregoing provisions of this section shall cease ten days after that person has been notified by the Competent Authority that his presence is no longer required in The Bahamas or, if he has earlier left The Bahamas, that he is not required by the Competent Authority to return for the purpose of a request.

16.—(1) Any person who having been ordered by a court of the Competent Authority in accordance with this Act or by any person acting in that behalf to produce any documents which are in his possession or under his control, fails so to do, shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Offences

(2) Any person who, contrary to the provisions of section 12(1), informs any person, other than his attorney, of the fact of the issue of a request or of any communication relevant to the matter to which the request relates, shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(3) Any person who, when required so to do in accordance with any subpoena served upon him, refuses to attend as required or to provide testimony in response to a request, shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(4) The provisions of subsections (1), (2) and (3) shall be without prejudice to the provisions of any law with regard to the liability of any person to be dealt with for failure to comply with any subpoena or other order issued by any court:

Provided that no person shall be punished both under this section and any other law for an offence relating to the same failure to comply with the same order.

Extension
of Court's
jurisdiction
in the taking
of evidence

17. Notwithstanding anything to the contrary in this Act or any other law the jurisdiction of a court under any existing law which enables the taking of evidence in The Bahamas for the purpose of criminal proceedings pending abroad shall extend to any application made for the purpose of a request approved by the Competent Authority whether or not such proceedings are pending or are proceedings not cognisable by that law or in which an order for the taking of evidence is not made in keeping with the previous practice of the court.

Manner of
executing
requests

18. An agency or department of government or a court shall, in giving effect to a request approved by the Competent Authority, have such powers as are necessary to execute the request in the manner sought under the request.

Charge upon
the Consolidated
Fund

19. All sums expended by the Competent Authority in the carrying out of a request shall be charged upon the Consolidated Fund.

SCHEDULE

(Section 2)

MUTUAL LEGAL ASSISTANCE TREATIES IN CRIMINAL MATTERS

1. Treaty between the Commonwealth of The Bahamas and the United States of America on Mutual Assistance in Criminal Matters executed by the government of The Bahamas on the 12th day of June 1987.